

EXHIBIT B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MIGUEL ORTEGA, BENJAMIN
ORTEGA, A Minor, By and through
his Guardian Ad Litem, ANA ROSA
ORTEGA,

A rectangular stamp with the word "COPY" in a bold, sans-serif font. To the left of the word is a small square icon containing a stylized 'C'.

Plaintiffs,

vs.

Case No. C07-02659 JCS

CITY OF OAKLAND, OAKLAND POLICE
DEPARTMENT, WAYNE TUCKER, In His
Capacity as the Police Chief of the
City of Oakland, RAMON J. ALCANTAR,
Individually and in his capacity as
a Police Officer for the City of
Oakland, DOES 1 THROUGH 200,

Defendants.

DEPOSITION OF MIGUEL ORTEGA

Wednesday, February 20th, 2008

Taken before Cathryn Bauer
Certified Shorthand Reporter
For the State of California
C.S.R. License No. 12676



Pizzotti & Jarnagin

Certified Shorthand Reporters
A Professional Corporation

(925) 416-1800 ♦ FAX (925) 416-0971

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MIGUEL ORTEGA  February 20, 2008

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1 What did you do that day in the -- well, let me get a
2 little bit more specific than that.

3 What did you do? Did you go to any kind of a
4 festival that day?

5 A Yes.

6 Q And where was that festival?

7 A On 14th, between Fruitvale and 40th.

8 Q And what -- what festival was that?

9 A Cinco de Mayo.

10 Q And how long were you at that festival for?

11 A I don't remember.

12 Q Okay. At some point, you left the festival;
13 correct?

14 A Yes.

15 Q Do you remember what time that was?

16 A I don't remember.

17 Q Okay. Was it in the morning or the afternoon?

18 A Early evening.

19 Q Early evening. So early evening. Was that
20 after 5:00 o'clock?

21 A I'm not sure.

22 Q Okay. And when you left the festival, did you
23 leave with anyone?

24 A I don't remember very well.

25 Q Okay. When you left the festival, where did you

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1 McDonald's, we were walking towards the corner, walking.

2 Q So you were walking. So at some point, you did
3 leave the house?

4 A Yes.

5 Q And what time was it when you left the house?

6 A I don't remember.

7 Q Why did you leave the house?

8 A Because we were going to go to the corner.

9 Q To which corner?

10 A The corner of 14th and 62nd.

11 Q So when you say 14th, you mean International
12 Boulevard?

13 A Yes. Yes.

14 Q So you walked unto -- you walked towards the
15 corner of 62nd and International?

16 A Yes.

17 Q And was that -- who was walking with you, if
18 anyone?

19 A Some friends and some cousins were walking with
20 me.

21 Q Do you remember the names of those friends and
22 cousins?

23 A I just remember the names of a few of them.

24 Q Can you give me the names of those people?

25 A Okay. My cousin, Eduardo Ortega; and my friend

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1 Jaime -- Jaime, Jaime, J-A-I-M-E -- Fajardo,
2 F-A-J-A-R-D-O.

3 MS. DOUAT: Can you repeat that?

4 THE INTERPRETER: F-A-J-A-R-D-O.

5 THE WITNESS: And Luis, L-U-I-S, Negerte,
6 N-E-G-E-R-T-E.

7 MR. VOSE: And is Luis a friend or a relative?

8 THE WITNESS: Friend.

9 MS. DOUAT: Can he spell the last name again?

10 THE INTERPRETER: N-E-G-E-R-T-E.

11 BY MR. VOSE:

12 Q Are those all the names you can remember?

13 A I have more of them in my head, but I can't
14 remember them.

15 Q How many people total would you say was in the
16 group with you when you walked to the corner of 62nd and
17 International?

18 A There were several, but I cannot remember how
19 many.

20 Q So more than yourself and the three people that
21 you've indicated here?

22 A Yes. Oh, yes.

23 Q Now, you indicated you went towards the corner
24 of 62nd and International. Did you make it to the
25 corner?

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1 A Yes.

2 Q And when you got to the corner, do you know
3 where Benjamin was?

4 A I don't remember very well, but he was about to
5 get to the corner, also.

6 Q Did you -- when you arrived at the corner of
7 62nd and International, did you see Benjamin?

8 A Yes; I did see him.

9 Q And where was Benjamin when you first saw him?

10 A Across from us, crossing the street from us.

11 Q So he was crossing International Boulevard?

12 A Not yet.

13 Q So he was on the other side of International
14 from where you were?

15 A Yes.

16 Q How long did you -- well, strike that.
17 When you got to the corner of 62nd and
18 International, what did you do?

19 A Nothing. I was just there waiting for him to
20 get there.

21 Q And how long did you wait for him to get there
22 before he arrived?

23 A I'm not sure.

24 Q Okay. Now, I want to try to understand which
25 corner you were on. Were you on the same side of

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1 A Yes.

2 Q What was Benjamin wearing?

3 A I only remember that he had a white shirt on.

4 Q Was it a T-shirt?

5 A Yes, a T-shirt. T-shirt.

6 Q And when he crossed International, was he
7 carrying the flag?

8 A Yes.

9 Q Okay. Do you know where he got the flag from?

10 A I'm not sure whether it was from my cousin's
11 house. I'm not sure.

12 Q Now, when you crossed -- excuse me. Strike
13 that.

14 At some point, Benjamin came in contact with the
15 two police officers that are named in this case.

16 A Yes.

17 Q Okay. Did you see them make contact with each
18 other?

19 A Yes.

20 Q And where were you when you first saw them make
21 contact with each other?

22 A I was still standing there at the corner.

23 Q Okay. And how did they make contact with each
24 other?

25 A I'm not sure how they came into contact, but

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1 back and forth between you and the officer?

2 A I don't remember what he did.

3 Q Okay. Did -- at some point, did he join the
4 group of you that was on the corner?

5 A Yes.

6 Q Okay. And what did the officers do, if
7 anything, at this point?

8 A He followed us and told us to get off that
9 corner and followed us all the way down to the house.

10 Q Did he -- when the officer -- when Benjamin
11 joined you on the corner, did you remain at the corner in
12 this group? Or did you start -- or did you return to
13 your cousin's house on 62nd Avenue?

14 A Well, the policemen told us to leave, to go
15 home.

16 Q So when the officer told you to leave, that's
17 what you did?

18 A Well, he followed us until we entered the house.

19 Q So when the officer told you to leave, you --
20 you immediately started to leave?

21 A Yes because he was pacing us with the car.

22 Q So when you -- so you left, and your brother
23 Benjamin left?

24 A All of us.

25 Q So the entire group left?

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1 **A Yes.**

2 **Q And did you all go to -- go towards the house on**
3 **62nd Avenue?**

4 **A Yes.**

5 **Q Okay. How far is it from that corner to your**
6 **cousin's house?**

7 **A I don't know how far, but it's the second house**
8 **from the corner.**

9 **Q Okay. Did anyone -- when you were on the corner**
10 **and there was a -- this exchange between the officers and**
11 **you, verbal exchange, did anyone else in the group say**
12 **anything to the officers?**

13 **A I don't remember.**

14 **Q Okay. Did you hear anyone call -- either of the**
15 **officers a coconut?**

16 **A No.**

17 **Q Did you call the officers a coconut?**

18 **A At no time did I say anything. Coconut, I did**
19 **not say that.**

20 **Q So the group of the -- of you started to**
21 **returning to your cousin's house on 62nd Avenue?**

22 **A Would you repeat that?**

23 **Q Once this verbal exchange happened between you**
24 **and the officer, you said that all of the group started**
25 **returning to the house on 62nd Avenue?**

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1 **A Yes.**

2 **Q When the officer said this to Benjamin, what did**
3 he do?

4 **A I don't remember.**

5 **Q Did he say anything to the officers?**

6 **A I don't remember.**

7 **Q Did he turn towards the officers?**

8 **A I don't remember.**

9 **Q Did Benjamin -- when Benjamin got to the corner,**
10 did he stop walking, or did he continue walking towards
11 the house?

12 **A I don't remember.**

13 **Q Okay. Now, as the group of you went towards**
14 your cousin's house, you said the officers followed you?

15 **A Yes. They pursued us.**

16 **Q And were the officers inside or their patrol**
17 car, driving, or were they walking?

18 **A In their patrol car. They were moving.**

19 **Q And were you -- were you walking or running**
20 towards the house?

21 **A All of us, we were all walking.**

22 **Q And that includes Benjamin?**

23 **A Yes.**

24 **Q Were you in front of Benjamin or behind him?**

25 **A I don't remember.**

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1 A Yes.

2 Q And did Benjamin go into the yard?

3 A Yes.

4 Q Okay. And did any of you go into the house?

5 A I went inside.

6 Q And when I say in the house, I -- I mean, you
7 know, physically inside the house, not up on the porch?

8 A Yes. Inside the house.

9 Q Okay. And did Benjamin go in the house?

10 A No.

11 Q Do you know if Benjamin went onto the porch?

12 A When the policemen told us to get into the
13 house, I was the first one of all of them that went
14 inside.

15 Q When you went into the house, where did you go
16 in the house?

17 A The living room.

18 Q And is that -- when you go into the house, when
19 you go through the front door, is that the -- the first
20 room you come to is the living room?

21 A Yes.

22 Q And when you went into the living room, what did
23 you do?

24 A He has like a metal door there. And then
25 through there, you can look outside.

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1 Q And so did you stay near the door?

2 A Yes.

3 Q Could you see your brother Benjamin while you
4 were inside the house?

5 A Yes.

6 Q And where was he standing?

7 A The house where I was has little steps coming
8 down, so he was right there next to the stairs.

9 Q And where were Officer Alcantar and Officer
10 Ortiz at this point? And those are the two officers that
11 are the defendants in this case.

12 A Inside the car.

13 Q So they were still inside the car?

14 A Yes.

15 Q And what were they doing?

16 A They were just saying things, just things, at
17 that time. Alcantar, the one that has a beard, he said
18 to me, whether my mom scolds me -- scolded me or
19 something, or why was it that I was inside the house,
20 whether it was that she had me tied down in there so I
21 would not go outside again. Oh, whether she was holding
22 me, not tied, but holding me with her hands.

23 Q And did you say anything at this point to the
24 officers?

25 A I did not say anything. It was my brother that

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1 they stop?

2 A All around.

3 Q Okay. And did you see the police officers -- as
4 I understand it, this -- this house, there's a fence and
5 a small gate by the sidewalk; is that correct?

6 A Yes.

7 Q Okay. And did you see the officers enter the
8 yard of the property?

9 A Yes.

10 Q And did you see which officer entered the yard
11 first?

12 A Alcantar.

13 Q Okay. And when Officer Alcantar entered the
14 yard, what did he do?

15 A He went straight to grab Benjamin.

16 Q And you had said earlier that Benjamin was near
17 the steps of the front porch?

18 A Yes.

19 Q Okay. And when officer Alcantar went to grab
20 Benjamin, how did he grab him?

21 A I don't know how he grabbed him, but it was
22 forcefully.

23 Q Was Benjamin facing towards Officer Alcantar?

24 A Yes.

25 Q Okay. And -- but you didn't see exactly how he

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1 grabbed him?

2 A No.

3 Q Okay. When Officer Alcantar grabbed Benjamin,
4 what happened then?

5 A That's when I screamed at him to let him go
6 because if not, I was going to get into it. And when I
7 opened the door to go to the steps to go grab him, before
8 coming down the steps, it was like three or four
9 policemen grabbed me, and they threw me down the steps.

10 Q Okay. So this is important, so I apologize if
11 I'm asking things again. And I'm sure your attorney will
12 object. But I just want to make sure I understand this.

13 You saw Officer Alcantar forcefully grab your
14 brother?

15 A Yes.

16 Q And when he grabbed him, what did your brother
17 do? What did your brother Benjamin do?

18 A He was just complaining.

19 Q And did Officer Alcantar handcuff your brother?

20 A Yes.

21 Q And when he handcuffed him, where was your
22 brother?

23 A We were almost next to each other on the ground,
24 both of us.

25 Q So -- so your brother at some point either fell

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1 him with force.

2 Q And did you come out of the house?

3 A Well, I didn't make it outside because when I --
4 trying to get out, it was when the policeman grabbed me.

5 Q So the policeman grabbed you inside of the
6 house?

7 A No; I was coming down the steps.

8 Q So you came outside of the house?

9 A It was almost when I was about to go down the
10 steps.

11 Q So you came out of the house onto the porch?

12 A Yes. I opened the door like this, and I was
13 coming out.

14 Q And you were heading towards where Benjamin and
15 Officer Alcantar were?

16 A Yes.

17 Q And do you remember which officer grabbed --
18 well, did an officer grab you?

19 A I don't remember, but there were three or four
20 of them.

21 Q And were these officers on the porch?

22 A I don't know where they came from.

23 Q And when -- at some point, one of the officers
24 made contact with you; correct?

25 A I'm not sure.

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1 Q You were taken into custody by the officers;
2 correct?

3 A Yes.

4 Q Okay. How did the officers take you into
5 custody?

6 A Well, I think they already knew that I was going
7 to go out against Alcantar because I was telling him to
8 let go of my little brother.

9 Q And so what stopped you from getting toward your
10 brother and Officer Alcantar?

11 A The policemen.

12 Q Okay. And how did they stop you?

13 A They threw me down to the ground.

14 Q Do you remember which officer threw you to the
15 ground?

16 A No.

17 Q Okay. How did -- describe how they threw you to
18 the ground.

19 A They grabbed me. I don't know how they did it.
20 But they just threw me down on the ground. I don't know
21 whether I fell on the steps. I don't know, but I just
22 know that I injured my back around the rib area and

23 put -- they had like an electric gun, like a pistol, like
24 this against my head.

25 Q And you ended up on the ground; correct?

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1 **A Yes.**

2 **Q And I when say "the ground," I'm not talking**
3 **about the porch, but the actual ground in the yard?**

4 **A Yes, down on the ground.**

5 **Q Were you on a sidewalk, or were you in a grass**
6 **or dirt area?**

7 **A Half-grass, half-cement.**

8 **Q Okay. And while you were on the ground, were**
9 **you handcuffed?**

10 **A They put handcuffs on me.**

11 **Q Do you know -- were you on your stomach or your**
12 **side? Do you remember?**

13 **A Stomach down.**

14 **Q Do you know which officer put handcuffs on you?**

15 **A No.**

16 **Q Was Officer Ortiz one of the officers with you**
17 **when this happened?**

18 **A But I think it was Ortiz because he took me --**
19 **he took me to the patrol car, and he was the one that was**
20 **tightening the handcuffs. And he would ask me, "So you**
21 **think you're a big man, huh?" So -- and then he would**
22 **just tighten them up. And I would say to him, "Just**
23 **tighten them. Just tighten them."**

24 **Q So after you were handcuffed, you were -- you**
25 **got up off the ground?**

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1 A Because my brother couldn't breathe very well,
2 and also, he was crying.

3 Q Did your brother say why he couldn't breathe
4 very well?

5 A He did not say why. He couldn't really speak.

6 Q Okay. How long were you in the back of the
7 patrol vehicle?

8 A I don't remember.

9 Q Was it more than 15 minutes?

10 A A good time. I don't remember.

11 Q Okay. Did the officer talk to you while you
12 were in the patrol vehicle?

13 A He said -- I don't remember whether it was
14 Alcantar or Ortiz. He said that it was our fault, that
15 they were going to call Immigration to come to that
16 house.

17 Q Did they say anything else to you?

18 A They said that -- that how old was I? I said
19 that I was 20. And he said, "So you're fine to be taken
20 to Santa Rita, then."

21 Q What did you say to the officers?

22 A I said to him that they should just let my
23 brother go and that they could take me to Santa Rita.

24 Q Did you say anything else to the officers?

25 A I don't remember very well.

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1 A Yes. They hurt me, this area, on this side,
2 around here.

3 Q And your pointing to your -- your left rear
4 back?

5 A Like my back -- like my back and my ribs.

6 Q And that's on your left side?

7 A Yes.

8 Q Is that where you landed on the ground, was it
9 on your left side, if you remember?

10 A I don't know how it was that they brought me
11 down, but they brought me down the steps.

12 Q Did you tell the officers that you were injured?

13 A I just told them that it was not necessary what
14 they were doing, that it was not.

15 Q Did you -- after you were released by the
16 officers, did you tell anyone that you were -- that you
17 were injured in this area that you've indicated, your
18 back and your ribs? Did you tell anyone about that?

19 A No.

20 Q Did you seek any kind of medical treatment for
21 those injuries?

22 A No. And still, when I get up in the morning, I
23 still feel a small pain there.

24 Q Okay. So you feel pain in that area in the
25 morning?

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1 the specific allegations in a complaint. I'm going to
2 let you ask about his emotional injuries, but please
3 don't refer to the complaint.

4 THE INTERPRETER: He was asking for repetition
5 of the question.

6 BY MR. VOSE:

7 Q You claim mental and emotional injuries. Do you
8 understand what -- what that means?

9 A I'm not sure.

10 Q Have you sought any counseling as a result --
11 psychological counseling as a result of this incident
12 with the police officers?

13 A I have not seen anyone for that, but my brother
14 did.

15 Q And have you had any problems sleeping as a
16 result of this incident?

17 A I don't remember.

18 Q And have you -- do you experience any stress or
19 anxiety when you see police officers now?

20 A Sometimes, yes.

21 Q Have you talk to anyone about these -- about
22 these things?

23 A No.

24 Q Do you have any other symptoms like what I've
25 described as a result of this incident?

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1 **A** **No.**

2 **Q** Are you currently employed?

3 **A** **Right now, I'm not working.**

4 **Q** Were you working at the time this incident
5 happened?

6 **A** **I don't remember.**

7 **Q** When was the last time you worked?

8 **A** **Like four months ago.**

9 **Q** And what was that for what -- what were you
10 doing?

11 **A** **With asbestos.**

12 **Q** And what were you doing with asbestos?

13 **A** **Remove asbestos.**

14 **Q** And who were you working for doing that work?

15 **A** **For Parc C Company [sic].**

16 **Q** And is that company located here in Oakland?

17 **A** **They're in Livermore.**

18 **Q** And how long did you work for that company?

19 **A** **Like two months or three months.**

20 **Q** And that's -- the last time you were employed,
21 was -- was that Parc C Company?

22 **A** **Yes.**

23 **Q** Prior to working for them, who did you work for
24 before that?

25 **A** **Schnitzer Steel.**

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1 Q Schnitzer Steel?

2 A Schnitzer Steel. That's where my dad works.

3 That's where I was working before that.

4 Q Is that Schnitzer Steel here in Oakland?

5 A Yes.

6 Q How long did you work at as the?

7 A Like eight or nine months.

8 Q And what were you doing working there?

9 A I would move the cars -- not moving cars,
10 grinding cars. Sorry. And I would drive also some of
11 the machines.

12 Q Other than these two jobs that you've just told
13 me about, have you had any other jobs since the incident
14 with the police officers?

15 A Yes. I have had other jobs.

16 Q And what were those other jobs?

17 A I have cleaned offices and cleaning stores.

18 Q And were those cleaning jobs, were they for a --
19 for one company or more than one company?

20 A Just one company.

21 Q And which company was that?

22 A I don't remember.

23 Q And do you remember about how long you worked
24 for that company?

25 A I don't remember.

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1 Q And you said, I believe you said a moment ago
2 that you don't remember if you were working when this
3 incident with the officer happened?

4 A Yes. I don't remember.

5 Q So do you know if you -- have -- strike that.
6 Have you missed any work that you know of as a
7 result of this incident with the officers?

8 A I don't remember.

9 Q You testified earlier that Luis Negerte is a
10 friend?

11 A Yes.

12 Q And your attorneys, when they disclosed
13 potential witnesses in this case, listed his address as
14 1387 62nd Avenue. Do you know if that's where he lives
15 currently?

16 A Avenue?

17 Q Avenue?

18 A Avenue.

19 Q This is the location where the incident
20 happened; correct?

21 A Yes.

22 Q And often do you see Luis Negerte?

23 A I have not seen him now. But before, I used to
24 see him every day.

25 Q And why don't you see him now?

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1 that after you returned to the house, the police car with
2 Officer Alcantar and Officer Ortiz in it ended up parked
3 in front of the house on 62nd. Do you remember that?

4 A Yes.

5 Q Okay. Because you know testified that -- that
6 you -- you forgot or can't remember if the car pursued
7 you or if they stopped at the shopping center, does
8 that -- does that change what you remember about the car
9 being in front of the house on 62nd?

10 A No. The car, it did come to the front of the
11 house. He did pursue us. But it's just that I don't
12 remember whether it was that it came out from the parking
13 lots or whether it was at the same time that my brother
14 was crossing the street.

15 Q Okay. I understand. Thank you.

16 A Then he followed us. He did pursue us. Yes.

17 Q Okay. I believe you testified you went straight
18 into the house when you returned to 62nd; right?

19 A Yes.

20 Q And you stayed behind, I guess, the metal door?

21 A Yes.

22 Q You were the only one that went into the house?

23 A Yes.

24 Q Everybody else stayed out in the yard?

25 A Yes.

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1 Q And that includes Benjamin?

2 A Yes.

3 Q Now, between the time that -- between the time
4 that the officers entered the yard and the time that they
5 arrived in the cars, the officers never got out of the
6 car until then; right?

7 A That -- well the thing is, I don't want to
8 change what I said before, in our conversation before.
9 But again, I don't remember whether they were already
10 there on the sidewalk telling us -- telling us things, or
11 whether they were inside their car.

12 MS. DOUAT: This is getting awfully repetitive,
13 Mr. Higa.

14 MR. HIGA: First of all --

15 MS. DOUAT: I understand you have the right to
16 ask questions. Just -- are there some new avenues that
17 haven't been --

18 MR. HIGA: Well, these are certainly new
19 questions because the -- you know, I haven't heard any
20 objections to them. I'm not attempting to belabor the
21 point. There were just some gaps in the testimony, and I
22 want to -- I believe I have the right to do that with some
23 followups. But I'll move forward.

24 THE WITNESS: From what I remember telling you
25 is that, "Oh, so is it your mom that's holding you back

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1 about four specific people, whether or not you had any
2 conversations with them about what happened on that day,
3 you and your brother.

4 MS. DOUAT: Is it a question or statement?

5 BY MR. HIGA:

6 Q My follow-up -- my follow-up question is, did
7 you talk to anybody in that entire group about this
8 accident, or, excuse me, about what happened on this day,
9 anybody in that entire group except for your brother?

10 A After it happened?

11 Q After it happened on that day, on that same day.

12 A Well, they saw it.

13 Q Did they talk you to about it?

14 A They just asked me how my brother was doing.

15 Q That's it?

16 A Yes.

17 Q Okay.

18 A From what I remember, just that.

19 Q Did you see anybody else in the group document
20 that your brother about what happened on that day?

21 A I don't remember.

22 Q Did anyone take any pictures of your brother
23 after the accident on that same day?

24 A Someone did, but I don't remember who.

25 Q Do you know when those pictures were taken?

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1 A That same day.

2 Q Okay. Was it -- was it at nighttime? When was
3 it?

4 A I don't remember.

5 Q Okay. Do you know where those pictures were
6 taken?

7 A I don't remember.

8 Q Do you know how many pictures were taken?

9 A Who knows? I don't know.

10 Q I think you testified earlier that you told the
11 officers that it was not necessary, what they were doing.
12 Do you remember that testimony?

13 A Yes.

14 Q Do you remember whether you told the officer
15 that?

16 A When they put that pistol on my head.

17 Q Okay. They put a gun to your head?

18 A An electric gun. Yes.

19 Q How did you know that?

20 A Because I felt a pistol. I felt the pistol, but
21 then with time, my cousin told me that it was one of
22 those electric ones.

23 Q You know, a little bit earlier, you talked about
24 having some pain in your back and I guess your -- it was
25 your back and your side; is that right?